IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24780 of 2004

Between:

1. A.P. Bentho Oriya Samkshema Sangam, Srikakulam, rep by its Secretary Murala Appalaswamy, R/o Vallapuram Vilalge, Naupada RS Post, Santhabommali Mandal, Srikakulam District.
2. G. Rambabu S/o Late Appalaswamy,
R/o Dasarathipet Vilalge, Naupada RS Post, Tekkali Mandal, Srikakulam District
3 G. Srinivasa Rao S/o Late Tatanna
R/o Vallapuram Vilalge, Naupada RS Post, Santhabommali Mandal, Srikakulam District
4 M. Krishna Rao S/o Late Suri
R/o Vallapuram Vilalge, Naupada RS Post, Santhabommali Mandal, Srikakulam District.
5 G. Manmadha Rao S/o Appa Rao
Peddapalem Vilalge, Purushothapuram Post, Sarubujjili Mandal, Srikakulam District
6 G. Rama Rao S/o Late Adinarayana
Burja Vilalge and Mandal, Srikakulam District

..... PETITIONERS.

AND

1. Government of Andhra Pradesh rep by Principal Secretary, Social Welfare Department, Secretariat Buildings, Hyderabad
2. Principal Secretary, Tribal Welfare Dept., Secretariat Buildings Hyderabad.
3. The Commissioner of Tribal Welfare, Government of Andhra Pradesh Hyderabad.
4. The District Collector, Srikakulam District.
5. The State Level Scrutiny and Review Committee Constituted under Rule 7(a) of the AP SC, ST & BCs) Regulation of Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 rep by Additional Secretary to

Government, Tribal Welfare Department

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more in the nature of Writ of mandamus declaring the action of the respondent No.5 in submitting the impugned report to the respondents No.1 and 2 holding that the petitioners herein do not belong to bentho Oriya Community but they belong to Vaddi community, without examining the issue by proper inquiry and without affording reasonable opportunity to the petitioners herein as illegal, void, arbitrary discriminatory and opposed to the principles of natural justice and consequentially to the direct the respondents to refrain from in any way giving effect to the report of the respondent No. 5 adverse to the interests of the petitioners and to treat the petitioners as the persons belonging to Bentho Oriya Community.

Counsel for the Petitioner: MR.M.R.K. CHOWDARY.

Counsel for the Respondents: GP FOR SOCIAL WELFARE

The Court at the admission stage made the following:

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 24780 of 2004

O R D E R**:**

Heard the learned counsel for the petitioners and the learned Government Pleader for Social Welfare.

This writ petition is filed seeking to declare the impugned report holding that the petitioners do not belong to Bentho Oriya community but they belong to Voddi community without examining the issue by proper inquiry and without affording reasonable opportunity to the petitioners as illegal and arbitrary.

Learned counsel for the petitioners contended that the

5th respondent has no jurisdiction to decide the disputes arising amongst the Bentho Oriya community and therefore the submission of report itself is illegal. He further contended that the committee constituted in pursuance of G.O.Ms.No. 3 Social Welfare 9J Department dated 18.1.1989 is the High Level Committee which has to consider each case and submit its report to the Government for taking decision in each case and therefore the present committee constituted under G.O.Ms.No. 65 Social Welfare (CV.2) Department dated 17.8.2004 has no jurisdiction. Hence he prays to admit the writ petition.

On the other hand, learned Government Pleader for Social Welfare contended that a State level scrutiny and review committee is constituted under Rule 7(a) of the A.P. (SC, ST & BCs) Community Certificates Act, 1993 (for short, 'the Act') and Rules 1997 (for short, 'the Rules') and therefore the 5th respondent has got jurisdiction to make recommendation to the Government and it is for the Government to accept or reject it and therefore the writ petition itself is premature.

As rightly contended by the learned Government Pleader, if the 5th respondent has jurisdiction to submit report to respondents 1 and 2, then the writ petition itself is premature as the respondents 1 and 2 have not taken any decision in pursuance of the report submitted by 5th respondent. A batch of writ petitions were filed by the present petitioners and the same were disposed of by a Division Bench of this court by its order dated 23.9.1996, where under it was held:

> "The dispute whether Vaddi community people in Srikakulam District and surrounding areas are the Bentho Oriya community or not, is pending since a long time and time and again certificates are being issued some times and rejected sometime. The Association itself filed a writ petition to declare them as belonging to Bentho Oriya community which is a Scheduled Tribe. Therefore the question involved affects number of people residing in that area and hence they filed a writ petition seeking a declaration that they belong to Bentho Oriya community. In view of the above we think it just and proper to direct the committee to consider the question whether the writ petitioners belong to Bentho Oriya community or not and conduct an enquiry, after issuing notices to the concerned persons and consider the question in a proper perspective manner to give quietus for the question permanently. Therefore we direct the committee to consider the aforesaid question and decide the same as expeditiously as possible. Pending disposal of the enquiry by the committee, the interim orders granted by this court in the above writ petitions, shall continue. With the above directions, the writ petitions are disposed of. No costs".

In the above batch of writ petitions the learned Government Pleader brought to the notice of the Division Bench that the Government has constituted High Level Committee vide G.O.Ms.No. 3 dated 18.8.1989. Under those circumstances, the Division Bench directed the committee to consider the question and decide the same as expeditiously as possible. In the meanwhile, the A.P. (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 came into force with effect from 16.5.1997. In pursuance of

the powers under Sub-Section (1) of Section 20 of the Act, the Government has passed the Rules, namely, the A.P. S.C. S.T. and B.C. – issue of community, nativity and date of birth certificates Rules, 1997, which were gazetted on 16.5.1997. The high level committee sent the record to the Tribal Cultural Research and Training Institute (TCR & TI) for detailed enquiry on the ground that several complications and issues are involved in determining the issue. The TCR & TI conducted detailed enquiry and submitted its report in the month of November, 2004 to the State Level Committee. There upon, the State Level Committee after affording reasonable opportunity to the petitioners including furnishing copies of report came to the conclusion that the petitioners do not belong to Bentho Oriya community and therefore the 5th respondent submitted its report to the 1st and 2nd respondents.

The contention of the learned senior counsel Sri M.R.K. Chowdary is that the committee constituted under G.O.Ms.No. 3 dated 18.1.1989 has to look into the matter and shall consider each case and submit the report to the Government but not the 5th respondent. The present committee has been constituted under Rule 7(a) of the Rules. Rule 7(e) of the Rules reads that the committee may also render necessary guidance and advise on cases referred to it where divergent and conflicting enquiry reports are received by the Government in respect of the community claims. The Division Bench of this court directed the committee to consider and decide the issue involved but the committee constituted in pursuance of G.O.Ms.No.3 dated 18.1.1989 is superceded by the present committee which is constituted under Rule 7(a) of the Rules. As per

Rule 20, all the executive instructions, Government Orders, Government Memoranda issued and are in force before the commencement of these Rules, shall stand annulled, without prejudice to the validity of anything previously done under those Government Orders/ Memoranda or executive instructions. So, in view of Rule 20, the committee constituted under G.O.Ms.No. 3 dated 18.1.1989 has no jurisdiction to submit report to the Government. The State Level Committee constituted under Rule 7(a) of the Rules, which was subsequently amended under G.O.Ms.No. 65 dated 17.8.2004 is the competent committee to enquire into the matter and submit report. Therefore, this court is unable to accept the contention of the learned senior counsel that 5th respondent has no jurisdiction. It is the 5th respondent who alone has got jurisdiction. Since the 5th respondent has got jurisdiction to submit report to the Government, it is for the respondents 1 and 2 to accept or reject the same.

Therefore, the writ petition is premature and is dismissed at the stage of admission. All the contentions raised in the writ petition including the jurisdiction of the 5th respondent are left open.

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K.C. Bhanu, J.

Date:02 --02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Principal Secretary, Social Welfare Department, Government of Andhra Pradesh, Secretariat Buildings, Hyderabad
2. Principal Secretary, Tribal Welfare Dept., Secretariat Buildings Hyderabad.
3. The Commissioner of Tribal Welfare, Government of Andhra Pradesh Hyderabad.
4. The District Collector, Srikakulam District.
5. The Additional Secretary to Government, Tribal Welfare Department,

State Level Scrutiny and Review Committee Constituted under Rule 7(a) of the AP SC, ST & BCs) Regulation of Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 , Hyderabad.

6. 2CCs to the G.P. for Social Welfare, High Court buildings, Hyderabad (OUT).

7. 2CD copies.